

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 11
)	
W.R. Grace & Co., <u>et al.</u>,)	Case No. 01-01139 (JKF)
)	(Jointly Administered)
)	
Debtors.)	
)	

**DECLARATION OF KRISTY L. BERGLAND IN SUPPORT OF ZAI CLASS
COUNSEL'S OPPOSITION TO MOTION OF LUKINS & ANNIS, P.S. FOR AN
ALLOCATION OF THE ZAI CLASS ACTION COMMON FUND FEE AWARD**

I, Kristy L. Bergland, hereby declare as follows:

1. I am presently the Lead Paralegal at The Scott Law Group, P.S. and have worked at that firm since it was established in late 2004. I supervise a staff of paralegals that perform work for the four attorneys who presently work at The Scott Law Group.

2. Prior to working for The Scott Law Group, I was a Litigation Paralegal at Lukins & Annis, P.S. for more than 13 years. I was first employed at Lukins & Annis from February of 1986 until November of 1992, chiefly working for Lukins & Annis' founder and namesake, Gene Annis. I returned to Lukins & Annis in April of 1998, after being contacted by the firm's president at the time, Gene Annis, who indicated they needed a lead paralegal to work for the class action practice group. I left Lukins & Annis effective December 15, 2004 and accompanied Darrell Scott to the newly established firm, The Scott Law Group.

3. Among my job responsibilities at Lukins & Annis was to write databases customized for complex litigation cases, primarily class actions. The databases, among

other things, enabled the firm to keep track of thousands of class members and manage a multitude of documents.

4. After I gave notice to Lukins & Annis that I would be leaving the firm effective December 15, 2004, Lukins & Annis requested that I prepare materials for the firm's President, Terry Whitten and the firm's Administrator, Frank Neeri, detailing the various cases on which Darrell Scott and I had been working. I prepared and provided to the firm all the information they requested. This included preparation of a chart explaining the Grace related matters, a copy of which was attached as Exhibit E to the Declaration of Darrell W. Scott filed previously in this matter ("Scott Declaration"). During this period, I was also involved in and had conversations with Terry Whitten and Lukins & Annis' in-house "Compliance" Attorney, Erika Balazs, regarding preparation of Lukins & Annis' Notices of Withdrawal and Substitutions of Counsel with regard to various matters, including all Grace-related matters, and preparation of letters from Lukins & Annis to its many Grace clients. Lukins & Annis was consulting with me on these matters because I wrote the databases containing the pertinent client information, including contact information, relevant to Lukins & Annis' Grace clients; I knew how to run database queries to easily ascertain the identity of Lukins & Annis' various clients; and I was adept at generating client letters using the Lukins & Annis database.

5. The Scott Law Group began operation on Thursday, December 16, 2004. Lukins & Annis, at that time, had not yet finalized its letter to its clients, nor had it finalized its Notices of Withdrawal and Substitution of Counsel.

6. Following my departure, Lukins & Annis contacted me at The Scott Law Group and requested that I return to Lukins & Annis and assist them in sending client

letters in two matters in which Lukins & Annis had determined to withdraw:

Metropolitan Mortgage (a securities fraud mass tort matter involving roughly three-hundred Lukins & Annis clients) and all Grace related matters (totaling 303 Lukins & Annis clients). Lukins & Annis made the request because I was the person who knew how to run the appropriate queries using Lukins & Annis' database and knew how to merge the client contact data (using Microsoft Access) into Lukins & Annis' letterhead (using Microsoft Word). I was also the person most familiar with the cases and knew how to appropriately caption the necessary pleadings for Lukins & Annis to file notices of withdrawal.

7. I requested and received approval from Darrell Scott to return to Lukins & Annis to help Lukins & Annis with these projects.

8. I arrived at Lukins & Annis on December 22, 2004. I was told that I needed to wait at the receptionist desk until someone from Administration arrived to escort me to my former office and to then monitor my activities while at Lukins & Annis. I was advised that I also needed to be escorted should I have reason to leave my former office.

9. Lukins & Annis' client letters and Notices of Withdrawal and Substitution being prepared on that day were all being reviewed by Lukins & Annis in-house "Compliance" attorney, Erika Balazs, as well as by the firm's President, Terry Whitten, who was consulting with Erika Balazs on transition matters.

10. Lukins & Annis provided me with a draft letter to its ZAI clients and asked that I prepare a mail-merge-ready version that could be used to generate multiple letters from its database. It is my recollection that Terry Whitten had prepared the draft

of the letter that I was given. My recollection is confirmed by the draft letter I was given on that day, dated December 22, 2004, which was an auto date code. In that regard, I have kept all these years the draft ZAI letter that Lukins & Annis provided to me to generate Lukins & Annis' client letter. I did so, in large part because of the distrust I experienced upon my arrival at Lukins & Annis on December 22. I didn't want to be blamed for anything, so I kept a folder of the rough drafts of documents I was working on. A copy of the draft letter Lukins & Annis provided to me was attached as Exhibit H to the Scott Declaration.

11. Exhibit H shows that the draft letter I was given was prepared using Terry Whitten's personal letterhead with his contact information. I did not have access to Terry Whitten's personal letterhead. His personal letterhead would only have been available to someone at Lukins & Annis. The initials at the bottom of Exhibit H are TRW:lji. This denotation reflects Lukins & Annis' protocol for identifying the attorney who wrote the letter and the secretary or paralegal who typed the letter and saved it onto Lukins & Annis server. The TRW:lji designation indicates that Terry Whitten prepared the draft letter and his personal secretary, Jeanne Issacson, typed the draft letter.

12. In the lower left corner of Lukin & Annis' draft ZAI letter (Exhibit H) is the following code:

\\SPOKANE1\VOL2\15DOC\LEB5UI-TRW-MET LETTER.DOC.

This designation also reflects Lukins & Annis' standardized protocol for naming and saving electronic documents. Based on my knowledge of Lukins & Annis' practices in generating documents, this naming designation indicates to me that Lukins & Annis prepared its draft ZAI client letter using as a template a previously drafted Lukins &

Annis client letter to be sent out to the Lukins & Annis Metropolitan clients, which had been previously saved on Lukins & Annis' server at Spokane\\VOL\15DOC. "15DOC" is the location for saving electronic documents prepared on the 15th floor of Lukins & Annis. Terry Whitten's office and his secretary's workspace were located on the 15th floor.

13. At the top of Exhibit H is handwriting: "Terry – ZAI Proposed Ltr. OK to Merge?" This is my handwriting. I made this notation and gave the draft letter to Terry to insure that the letter had his approval. The handwritten revisions to the letter are not my handwriting. I assumed that the revisions were made by Terry Whitten because I sent the draft to Terry Whitten for his review and approval. I am now told that these revisions are not Terry Whitten's handwriting and that he does not use cursive. The only other attorney that I am aware of involved that day in finalizing the Lukins & Annis letter was Erika Balazs. Based on other pleadings I have now had opportunity to review bearing the same handwriting, I believe the changes were made by Lukins & Annis attorney Erika Balazs, who was working directly with Terry Whitten on this matter. The reason there are two "Oks" in my handwriting on the draft letter is because I sought approval of both Erika Balazs and Terry Whitten, the two attorneys who were working directly with me on all transition cases.

14. In all events, someone at Lukins & Annis made these handwritten revisions and I received the approval of both Terry Whitten and Erica Balazs to prepare a mail-merge-ready letter for Lukins & Annis using that draft letter and including the handwritten changes Lukins & Annis had made. Exhibit I, attached to the Scott Declaration, is the mail-merge-ready version of the ZAI client letter that I prepared on

December 22, at Lukins & Annis' direction, as approved by Terry Whitten and Erica Balazs, and which I used on that day to generate letters for Lukins & Annis to send to their many Grace clients. It is my recollection that Lukins & Annis' letters to its clients were mailed by Lukins & Annis on that same that day.

15. I was also asked by Lukins & Annis to prepare for Lukins & Annis Notices of Withdrawal and Substitution as to all of its Grace cases. In that regard, Lukins & Annis had at the time a form bank of pleadings that Lukins & Annis used for standard pleadings, a form bank which I had helped to create while at Lukins & Annis. In preparing Notices of Withdrawal and Substitutions of Counsel that Lukins & Annis requested, I utilized Lukins & Annis' standard form Notices of Withdrawal and Substitution of Counsel as found in Lukins & Annis' form bank. As I recall, drafts of the Notices of Withdrawal and Substitution that I prepared were left with Erika Balazs and/or Terry Whitten.

16. Upon returning to The Scott Law Group on December 22, 2004 (located 2 blocks from Lukins & Annis), I recorded my time sheet, as I always do, at the end of the day. My time sheet for that day reflects a total of nine hours of work, seven (7.0) hours of which were spent at Lukins & Annis, at Lukins & Annis request, performing work for Lukins & Annis, including generation of Lukins & Annis' withdrawal letters to its Grace clients.

17. Following my departure from Lukins & Annis, numerous U.S. ZAI claimants formally retained The Scott Law Group to represent their interests in Grace's bankruptcy through execution of a retainer agreement. In total 554 U.S. ZAI claimants executed retainer agreements with The Scott Law Group. Of that number, 239 are

individuals to whom Lukins & Annis' sent the above-referenced letter of withdrawal.

Lukins & Annis sent its withdrawal letter to 271 ZAI clients. Of Lukins & Annis' 271 ZAI clients, 32 clients did not retain the Scott Law Group.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

DATED: June 2, 2014


KRISTY L. BERGLAND